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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,220	10/28/2003	William R. Raap	07184-00049	4948

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EXAMINER	
NGUYEN, SON T	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,220	RAAP ET AL.	
	Examiner	Art Unit	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 March 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10,12,13,15-18,20-27 and 33-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10,12,13,15-18,20-27 and 33-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-10,12-13,15-18,20-27,33-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added language of "so as to not block at least some of said plurality of passageways" or "so as to not block at least some of said plurality of openings in said bottom" is not described in the specification. Page 5, [0018] of the specification only states that the rodent deterrent is applied to the exterior surface of the container by adhesive bonding such as latex rubber or the like. No where does it states that one should only apply the adhesive in certain area where the deterrent are to be located and not on all surface of the exterior of the container so as to not block some of the passageways.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 1,4-8,12,15-17,20-21,24-25,33-34,36** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. (DE019907577C1) in view of Young (as above).

For claims 1,5-8, Fernando et al. teach a device comprising a container having an exterior including a bottom wall 1b and a sidewall 1a extending upward from the bottom wall and defining an opening, the bottom wall and sidewall each formed from a plurality of elongate biodegradable fibers so as to define a plurality of passageways that allows the roots of the plants to grow therethrough when the plants are planted n the container. In addition, Fernando et al. teach the fibers are coir and are bonded with one another by latex rubber. However, Fernando et al. are silent about a rodent deterrent on the exterior wall of the container so as to not block at least some of the passageways.

Young teaches a container having an exterior including a bottom wall and a sidewall extending upward from the bottom wall and defining an opening; and a rodent deterrent (ref. 12 or the vinegar in the coating) secured to at least a portion of the exterior of the container. Note, (see Internet article "Pest Control: How to get rid of rats" where they use vinegar to deter rats). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a rodent deterrent as taught by Young on the exterior of the container of Fernando et al. in order to, not only deterred rodent, but to create an aesthetically pleasing in appearance container (lines 4-6 of Young). Note lines 44-46 of Young, Young states that the plaster is porous, thus, when the plaster is applied to the container of Fernando, it will not block at least some of the passageways.

For claim 4, Fernando et al. as modified by Young teach the deterrent being small particles (line 31 of Young) but is silent about the particles being seashell fragments. It is notoriously well know in the plant container industry that various decorative material such as seashell is employed to, not only deterred, but to make the container more pleasing in appearance. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ seashell fragments as the preferred particles for the

container of Fernando et al. as modified by Young, depending on the user's preference for a more aesthetically pleasing container, since seashell fragments are notoriously well known to be used on container. Note also that Applicant has no criticality as to why seashell fragments are to be used instead of other materials. As a matter of fact, page 5, [0018] of Applicant's specification states that "crushed seashells are not the only material suitable for use as structures 46 for providing rodent deterrence. Other suitable materials include crushed stone or concrete, particularly where these materials are relatively hard."

For claims 12,15-17, Fernando et al. teach a system for plants comprising a container having a preformed free-standing walls 1a and a bottom wall 1b, both walls comprising biodegradable fibers (such as coir fibers) bonded together by latex rubber, the bottom wall includes openings 3,4; a second soil contained within the cavity (inherent since it is a planting pot which plant lives in soil). However, Fernando et al. are silent about bulbs being contained in the container which stored the second soil; and a rodent deterrent attached to the exterior of the container and bulbs so as to not block at least some of the openings in the bottom.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ bulbs in the container of Fernando et al., depending on the user's preference to grow bulbs or seeds or the like. Fernando's container is designed for germination and planting so one can have a choice to grow whatever desired in the container of Fernando.

Young teaches a container having an exterior including a bottom wall and a sidewall extending upward from the bottom wall and defining an opening; and a rodent deterrent (ref. 12 or the vinegar in the coating) secured to at least a portion of the exterior of the container. Note, (see Internet article "Pest Control: How to get rid of rats" where they use vinegar to deter rats). It would have been obvious to one having ordinary skill in the art at the time the invention was

made to employ a rodent deterrent as taught by Young on the exterior of the container of Fernando et al. in order to, not only deterred rodent, but to create an aesthetically pleasing in appearance container (lines 4-6 of Young). Note lines 44-46 of Young, Young states that the plaster is porous, thus, when the plaster is applied to the container of Fernando, it will not block at least some of the passageways.

For claim 20, Fernando et al. as modified by Young teach the limitation as claimed in the above. The nutritive growth-enhancer is equivalent to the rodent deterrent 12 (as taught by Young).

For claim 21, see claim 4 above.

For claim 24, Fernando et al. as modified by Young teach a method of planting comprising the step of providing the container as already described in claim 12 (Young teaches the deterrent). Since the container of Fernando is biodegradable, one could assume that the container is planted in the ground so that, eventually, the fibers will degrade and thus, making the container environmentally friendly. However, only an abstract is obtained for translation, thus, it is hard to tell if Fernando's container is intended to be buried in the ground or soil. In any event, it is notoriously well known in the planting art that containers, be it biodegradable or not, are buried in the soil or ground. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of planting the assembly in a second soil in the method of Fernando et al. as modified by Young, for such step is notoriously well known in the art and also, it is believe that this is the intention of Fernando's container since the container is biodegradable.

For claim 25, Fernando et al. as modified by Young teach the step of deterring a rodent from accessing the cavity by employing the particles 12 (as taught by Young).

For claim 33, Fernando et al. as modified by Young teach wherein the deterrent is distributed over substantially all of the exterior (see fig. 1 of Young which shows the particle 12 covering substantially all of the exterior of the container).

For claim 34, Fernando et al. as modified by Young teach the deterrent is a particulate 12 (as taught by Young).

For claim 36, Fernando et al. as modified by Young teach wherein the bottom wall and side wall are made such that a rodent can gnaw therethrough and the rodent deterrent deters the rodent from gnawing through the bottom and side walls.

5. **Claims 2-3,13,23,26** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. as modified by Young as applied to claims 1,12,20,24 above, and further in view of Kawaguchi et al. (5675933).

For claims 2-3,13,23, Fernando et al. as modified by Young are silent about a grid closure. Kawaguchi et al. teach a plant container with a grid cover 43 to protect the plants in the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a grid cover as taught by Kawaguchi et al. in the assembly of Fernando et al. as modified by Young in order to protect the plants growing therein.

For claim 26, Fernando et al. as modified by Young are silent about the step of providing a grid closure. Kawaguchi et al. teach a plant container with a grid cover 43 to protect the plants in the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of providing a grid cover as taught by Kawaguchi et al. in the method of Fernando et al. as modified by Young in order to protect the plants growing therein.

6. **Claims 9-10,18,22,27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. as modified by Young as applied to claims 1,12,20,24 above, and further in view of Okii et al. (4945059).

For claims 9,10,18,22, Fernando et al. as modified by Young are silent about a growth enhancer applied to at least a portion of the interior face. Okii et al. teach a growth enhancer (such as a fungus) for accelerating growth in plants. The enhancer is released in the soil for the plants to absorb. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by Okii et al. in the assembly of Fernando et al. as modified by Young in order to accelerate the plants' growth. Once the enhance is released, it will be applied to at least a portion of the interior surface of the container of Fernando et al. as modified by Young.

For claim 27, Fernando et al. as modified by Young are silent about the step of releasing a growth enhancer from the container. Okii et al. teach a growth enhancer (such as a fungus) for accelerating growth in plants. The enhancer is released in the soil for the plants to absorb. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a growth enhancer as taught by Okii et al. in the method of Fernando et al. as modified by Young in order to accelerate the plants' growth. Once the enhance is released, it will be applied to at least a portion of the interior surface of the container of Fernando et al. as modified by Young.

7. **Claim 35** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fernando et al. as modified by Young as applied to claim 1 above, and further in view of Shiraishi (1762082).

Fernando et al. as modified by Young are silent about wherein the bottom wall includes an exterior surface and the rodent deterrent is distributed over substantially the entirety of the exterior surface.

Shiraishi teaches a device comprising a container 1 having an exterior including a bottom wall and a sidewall extending upward from the bottom wall and defining an opening; and a rodent deterrent 3,4 secured to at least a portion of the exterior of the container. Deterrent 3 is cement which is made out of limestone, which limestone is fragments of marine sediments such as seashells. Deterrent 4 is hardened lava which is sharp material so can deter rodents due to the sharp edges of the lava (see drawings showing sharp edges). In addition, Shiraishi further teaches wherein the bottom wall includes an exterior surface and the rodent deterrent is distributed over substantially the entirety of the exterior surface (see fig. 3, ref. 6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the rodent deterrent on the bottom wall as taught by Shiraishi of the container of Fernando et al. as modified by Young in order to deter the rodent from all parts of the container and not just the sidewall.

Response to Arguments

8. Applicant's arguments with respect to claims 1-10,12-13,15-18,20-27,33-36 have been considered but are moot in view of the new ground(s) of rejection. However, arguments pertaining to Fernando et al. will be address herein.

Applicant argued that the deterrent of Applicant attached to the container so as to not block passageways or openings defined by the fibers that make up the container, which deterrent of Fernando et al. as modified by Young does not.

As stated in the above 112 1st rejection, Applicant has no support for such added language of "so as to not block passageways or openings". Therefore, Applicant is arguing something that Applicant does not even teach. Even if so, Applicant admitted that the plaster of Paris used by Young to bond the particles 12 to the container is thin and would dissolve with continued exposure to water, thus, even if spread throughout the whole exterior surface of the

container, the plaster of Paris, since being thin, would dissolve and thus, will not block passageways or openings in the container of Fernando et al. Furthermore, lines 44-46 of Young, Young states that the plaster is porous, thus, the plaster does not block the passageways.

Applicant argued that Young's decoration is made by applying a continuous layer of plaster of Paris to the pot's exterior surface and then embedding cinders partially into the plaster of Paris.

No where in the Young reference stating that the plaster is continuously applied to the pot. Applicant mere allegation without evidence of such teaching is not persuasive. See also the comment above regarding the plaster dissolving and being porous.

Applicant argued that Fernando et al. and Young combination is improper because the combination changes the principle of operation of the Fernando et al. pot.

The principle of operation of Fernando's pot in no way change because with or without the particles 12 of Young, the pot's main operation is a container for plant and over time, the container will degrade. By placing particles 12 of Young for decoration on the container of Fernando does not change the operation of the container as alleged by Applicant because as stated, the plaster of Paris will dissolve and open up passageways for the roots, hence, nothing pertaining to operation has changed. In addition, the plaster is porous so it does not block passageways created by the fibers of the container.

Applicant argued that cinders are not biodegradable, hence, applying cinders to the Fernando's pot will change the operation of the pot regarding completed biodegradable nature of the pot.

Young does not state that one has to use cinders for particles 12. Young states any porous material for particle 12 and gives example such as cinders. Therefore, other materials

can be used that are biodegradable. In addition, Applicant listed concrete as a preferred deterrent but it is not sure that concrete is really biodegradable since what bacteria can really degrade concrete? Cinder is a fragment of burned wood, coal or charcoal, which is more likely to degrade than concrete of Applicant.

Applicant argued that Young's decoration would fail on the Fernando et al. pot when handled because the thin plaster of Paris layer would be too weak. Someone skilled in the art simply would not make the combination because the resulting decorated pot would be so fragile, not to mention that the intended functionality would be destroyed.

Again, Applicant allegation has no support or evidence of such teaching in Young that Young applies a thin layer of plaster. No where in Young states that one should apply a thin layer of plaster. In addition, the operation of Fernando's pot would not change since the plaster is porous anyhow so the passageways created by the coir are not blocked as alleged by Applicant.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Son T. Nguyen
Primary Examiner
Art Unit 3643

stn